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## U.S. Scores Victory in Tuna Dispute with Mexico

The U.S. scored a victory at the World Trade Organization (WTO) Oct. 26 in its long-running trade dispute with Mexico regarding “dolphin safe” tuna labeling. Two WTO dispute panels found that the 2016 modifications the U.S. made to its labeling measures brought the country into compliance. Mexico plans to appeal.

Specifically, the panels found that distinctions between setting on dolphins and the other fishing methods stem exclusively from legitimate regulatory distinctions. Consequently, they found that the measure accords to Mexican tuna products treatment no less favorable than that accorded to like products from the U.S. and other countries, and is therefore consistent with WTO obligations. As a result, Mexico cannot retaliate against the U.S., as it had been granted permission to do in May to the tune of \$163.23 million per year (see **WTTL**, May 29, page 6).

“I am pleased that WTO panels have finally agreed with the overwhelming evidence that U.S. dolphin-safe labeling requirements are accurate and fair,” U.S. Trade Representative (USTR) Robert Lighthizer said in a statement. The administration “is committed to defending U.S. rights to enforce environmental measures that protect wildlife and facilitate fair trade,” he added.

“While today’s ruling is a positive step, dolphin-saving policies should never have been challenged as a trade violation in the first place. Over the course of two decades, the U.S. has repeatedly had to spend taxpayer dollars to defend this common sense environmental protection from corporate trade rules. With Mexico appealing today’s ruling, we’re still not out of the woods,” said Ben Beachy, director of the Sierra Club’s Responsible Trade Program.

## Three Weeks Late, State Posts Guidance on Russia Sanctions

In guidance issued more than three weeks past its deadline, State Oct. 27 listed the names of 40 entities that it determined are “part of, or operate for or on behalf of, the defense or

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intelligence sectors” of the Russian government, but did not impose any sanctions. The list was required under the Countering America’s Adversaries Through Sanctions Act (H.R. 3364) that Congress overwhelmingly passed in July.

“The Guidance names certain persons, but it is not a determination regarding imposition of sanctions. No asset freezes are being imposed on these named persons as a result of their inclusion in this Guidance, and inclusion in this Guidance does not, of itself, mean such persons are added to ...Treasury’s List of Specially Designated Nationals List and Blocked Persons or Sectoral Sanctions Identification List,” State said in the public guidance.

Sanctions could be imposed on those entities involved in “significant transactions” with the defense or intelligence sector. In a background briefing with reporters, a senior State official called it a “flexible standard.” The criteria could include: “the scope and magnitude of the transaction, the size of the transaction, the type of items transferred, the national security and/or foreign policy interests of the U.S. at stake in any given transaction,” the official noted.

The new guidance comes the day after State Spokesperson Heather Nauert announced the guidance was coming soon and a report was published in Foreign Policy magazine that State has scrapped the office that coordinates sanctions policy. The announcement and the report drew instant response from Congress.

“We are encouraged that the sanctions list includes many targets from the Russian defense and intelligence sectors that Congress previously identified and look forward to more closely reviewing the list to ensure that it is comprehensive,” Sens. Ben Cardin (D-Md.) and John McCain (R-Ariz.) said in a joint statement Oct. 26. The two previously questioned the White House’s commitment to legislation it grudgingly signed two months before (see **WTTL**, Oct. 16, page 3).

“We also encourage the State Department to dedicate robust staffing and resources to the implementation effort, especially in light of reports that the sanctions office has been closed, a number of its staff have resigned, and the mandate for sanctions implementation has been shifted to the Policy Planning staff, which has not traditionally played an operational role,” the lawmakers added.

Senate Foreign Relations Committee Chair Bob Corker (R-Tenn.) praised the announcement. “The guidance provided today by the State Department is a good first step in responsibly implementing a very complex piece of legislation, and I appreciate Secretary Tillerson’s attention to this important issue. Congress will expect thorough and timely consultation until full implementation is complete,” he wrote in a statement.

Right before the State announcement, 20 Democratic House Foreign Affairs Committee members joined their Senate counterparts in demanding that administration enforce Russia-related sanctions. “This deadline [Oct. 1] is now three weeks past. When can we expect this information? Why has your Administration ignored the explicit provisions of a law that you signed?” the lawmakers wrote.

When questioned about the delay at the daily briefing Oct. 26, Nauert responded, “we were given about two months to pull it together, which is a relatively short period of time to be able to work through all of this, work across the interagency, to determine the types of entities, the type of industry that would be affected, and to work out all those details.”

## Trade Nominees Move Forward, But With Some Controversy

The Senate Finance Committee advanced the nominations of several trade figures Oct. 24, and as expected the votes for the proposed deputy USTR fell mostly along party lines. Also as expected, two other non-controversial nominations -- Jason Kearns to be a member of the International Trade Commission (ITC) and Gregory Doud to be USTR chief agricultural negotiator -- were approved by voice vote.

Jeffrey Gerrish, nominee for deputy USTR (Asia, Europe, the Middle East and Industrial Competitiveness), passed via a roll call vote of 15-11. Gerrish has been the subject of controversy for voting in Virginia during the 2016 presidential election despite residing in Maryland (see **WTTL**, Oct. 9, page 4).

Before the vote, Ranking Member Ron Wyden (D-Ore.) criticized Gerrish for not addressing the controversy in his opening statement before the committee earlier in the month. “I understand that this matter of Mr. Gerrish’s vote was referred to the Commonwealth’s Attorney’s Office in Fairfax, Va. by both the Democrat and the Republican who make up the Fairfax County Elections office. Because this matter has now been sent to the appropriate law enforcement officials and the inquiry is ongoing, I will not be able to support this nominee at this time,” said Wyden.

Sen. Thomas Carper (D-Del.) requested a delay in the vote on Gerrish, telling Chairman Orrin Hatch (R-Utah) that the investigation would soon be concluded and thus a partisan vote could be potentially avoided. Hatch rejected the suggestion, saying the committee’s schedule was too full to delay the vote. The vote proceeded along party lines, with the exception of Sen. Sherrod Brown (D-Ohio) who joined the majority.

“These three nominees have demonstrated they are well-qualified and ready to serve in each of these important roles. As President Trump continues to advance his trade agenda, it is essential that his administration is well-staffed and ready to get to work. I am pleased that the Senate Finance Committee did its part today, and I hope the Senate will act quickly to get these nominees across the finish line,” Hatch said in a statement following the vote.

## Senator Could Hold Future Trade Nominees

Acting Customs and Border Protection (CBP) Commissioner Kevin McAleenan sailed through his confirmation hearing before the Senate Finance Committee Oct. 24. Despite the receptive atmosphere, McAleenan may be the last trade nominee to move out of committee if the Ranking Member has anything to say about it.

At the end of the hearing, Sen. Ron Wyden (D-Ore.) accused the administration of being out of compliance with the Trade Promotion Authority Act. “Contrary to federal law, the American people are in the dark about what their government is asking for on NAFTA. ... I insisted in the last Congress, that the administration publish and regularly update public summaries of its trade objectives, and as of now, the administration is falling down horribly on the job,” he said.

“It’s my intention to not support moving from the committee any additional trade nominees until federal law is complied with and the summaries are actually updated,” said Wyden. Should Wyden make good on his intention, that could hold up the nominations of Dennis Shea to be U.S. ambassador to the WTO and CJ Mahoney to be deputy USTR for China, Africa and the Western Hemisphere. Just before the hearing, the committee approved three other trade nominees (see related story, page 3).

McAleenan became acting commissioner Jan. 20, 2017, and previously served as deputy commissioner beginning Nov. 2, 2014, so he was already known to the committee. On intellectual property rights (IPR) enforcement, McAleenan testified that in 2017, the fiscal year ended with CBP’s highest number of IPR seizures, “over 34,000.” Those seizures have been spurred by an explosion in e-commerce, he noted.

The long-touted Automated Commercial Environment (ACE) should be in final production by February 2018, McAleenan said. “We are nearing the finish line with ACE,” he said. “We are in the seventh of seven deployments, in the second stage of that. In December we’re going to have a release and then February 24 we intend to have our final ACE release in production, and that would include the drawback capabilities.”

McAleenan also testified that CBP quickly implemented the Enforce and Protect Act (EAPA). “I think getting the interim final rule published on time, within six months of the finalization of the act, was a big start, and within weeks we were receiving allegations through the EAPA process,” said McAleenan. CBP has 14 ongoing investigations. In its first final action under the law, CBP in August found “substantial evidence” that wire hangers were transshipped from China through Thailand to evade antidumping duties (see **WTTL**, Aug. 21, page 7).

## **Lawmakers Want New MTB by End of Year**

House Ways and Means trade subcommittee members want a new Miscellaneous Tariff Bill (MTB) passed by the end of the year. “This is a priority for us to complete this year and its timely renewal is critical,” Rep. Dave Reichert (R-Wash.) said at a subcommittee hearing on the bill Oct. 25.

“One key reason that this bill stands to enjoy broad bipartisan support is the underlying analysis completed by the International Trade Commission [ITC] and the Department of Commerce to ensure that products that are currently produced in the United States are

not included in the final bill, in this way the MTB is designed to prevent domestic companies from being harmed.” said Rep. Bill Pascrell (D-N.J.). “I look forward to working with other members of Congress to pass a non-controversial MTB in the coming weeks for the first time in seven years,” he added. Pascrell blamed the gap on the majority being “short-sighted in far too blunt earmark policy.”

He added that the boost manufacturers get from MTB is small compared to the threat from China’s “ambitious industrial policy” Made in China 2025. Reichert likewise addressed the need to help U.S. companies stay competitive, “especially with increasing pressure from China.”

The ITC submitted its final MTB report to Senate Finance and House Ways and Means committees in August (see **WTTL**, Aug. 14, page 4). Of the 2,524 petitions, 72% (1,827) met beneficiary requirements.

**\* \* \* Briefs \* \* \***

**BELARUS:** Treasury Oct. 24 issued General License 2D extending authorization of transactions with nine blocked companies in Belarus and any entities owned 50% or more by them until April 30, 2018 (see **WTTL**, May 1, page 10). Transactions are authorized with Belarusian Oil Trade House, Belneftekhim, Belneftekhim USA, Inc., Belshina OAO, Grodno Azot OAO, Grodno Khimvolokno OAO, Lakokraska OAO, Naftan OAO and Polotsk Steklovolokno OAO.

**ANTIBOYCOTT:** Phillips Specialty Products of Bartlesville, Okla., received warning letter from BIS Sept. 29 for furnishing information about business relationships with boycotted countries or blacklisted persons in March 2013. A shipping certificate regarding sales to Libya included language: “We hereby state that the carrying vessel is allowed to enter Libyan ports.”

**EXPORT ENFORCEMENT:** Alexey Barysheff of Brooklyn, N.Y., naturalized U.S. citizen, was sentenced Oct. 19 in Brooklyn U.S. District Court to time served on charges of illegally exporting controlled microelectronics, including digital-to-analog converters and integrated circuits, to Russian end-users without Commerce licenses. He pleaded guilty to submission of false export information. Two Russian nationals, Dmitrii Aleksandrovich Karpenko and Alexey Krutilin, also were sentenced to time served in same court in April (see **WTTL**, May 1, page 9). Both pleaded guilty to conspiracy to violate International Emergency Economic Powers Act. Scheme allegedly involved two U.S.-based front companies shipping items first to Finland and then to Russia.

**MORE EXPORT ENFORCEMENT:** ARC Electronics salesperson Viktoria Klebanova and Lyudmila Bagdikian were sentenced Oct. 18 in Brooklyn U.S. District Court to time served on charges of unlicensed export of microelectronic products to Russian military and intelligence agencies between 2008 and 2012. Both pleaded guilty in January 2013. Codefendant Anastasia Diatlova was sentenced Sept. 14 to time served followed by two years’ supervised release (see **WTTL**, Oct. 9, page 7). She was convicted in October 2015. Codefendant Alexander Posobilov of Houston was sentenced in February to 135 months in prison for his role. In all, 11 Russian and U.S. naturalized citizens were indicted in scheme.

**AFRICA:** USTR Robert Lighthizer Oct. 23 asked ITC to conduct Section 332 investigation on trade and investment with Sub-Saharan Africa (SSA). “It is important to have factual information on where we are succeeding in African markets, where we have the greatest prospects for increased

trade and investment, and the factors that could impede that progress. We also need similar information on SSA's trade performance and on future prospects for its exports to the United States, including those under the African Growth and Opportunity Act (AGOA)," USTR wrote.

**STEEL:** Congressional Steel Caucus Oct. 25 named Reps. Rick Crawford (R-Ark.) and Mike Bost (R-Ill.) co-chairmen, replacing former Rep. Tim Murphy (R-Pa.). Rep. Pete Visclosky (D-Ind.) continues as vice-chairman. "Congressman Crawford has been a tenacious supporter of steel producing companies and their workers. With the First District of Arkansas among the top steel producing districts in the U.S., Congressman Crawford has worked tirelessly to ensure a strong steel industry. He has also been a vocal supporter of a robust, long-term transportation bill, and of workforce development to promote the future of the manufacturing workforce – both of which are key for the American steel industry," said Thomas J. Gibson, president and CEO of American Iron and Steel Institute, in statement praising new leadership.

**NORTH KOREA:** Treasury's Office of Foreign Assets Control (OFAC) sanctioned seven individuals and three entities tied to North Korea regime. Pursuant to Executive Order (EO) 13722, OFAC designated Military Security Command (aka Military Security Bureau or Korean People's Army Security Bureau), External Construction Bureau and Ch'olhyo'n Overseas Construction Company. Pursuant to EO 13687, OFAC designated Jo Kyong-Chol, director of Military Security Command; Sin Yong Il, deputy director of Military Security Command; Ri Thae Chol, Democratic People's Republic of Korea (DPRK) first vice minister of Ministry of People's Security; Ku Sung Sop, consul general in Shenyang, China; Kim Min Chol, diplomat at North Korean Embassy in Vietnam; Jong Yong Su, DPRK Minister of Labor; and Kim Kang Jin, director of External Construction Bureau.

**IRAN:** House passed Iran Ballistic Missiles and International Sanctions Enforcement Act (H.R. 1698) in 423-2 vote Oct. 26. Bill requires president to report on Iran's ballistic missile activities and potential violations to Congress and impose sanctions accordingly (see **WTTL**, Oct. 16, page 1). "Yesterday, the House cracked down on Iran's leading terrorist proxy, Hezbollah, which Iran uses to spread terror and undermine regional stability. And today, we passed my bill targeting Iran's intercontinental ballistic missiles program. These sanctions will squeeze Iranian and foreign companies, banks and individuals that support the Iranian regime's illicit weapons programs. Iran must know that the United States will not tolerate its dangerous behavior," bill sponsor Rep. Ed Royce (R-Calif.) said in statement.

**TRADE PEOPLE:** Brian Bombassaro named Senate Finance international trade counsel. He was associate at Arnold & Porter Kaye Scholer LLP for last five years with focus on investor-state dispute settlement, sovereign finance and international trade.

**GSP:** USTR Robert Lighthizer Oct. 24 announced new effort to make sure beneficiary countries meet eligibility criteria of Generalized System of Preferences (GSP) program. New effort will have "heightened" focus on concluding GSP cases and new interagency process to assess eligibility that will involve triennial assessment by USTR and relevant agencies. If compliance concerns are raised, administration can self-initiate full country practice review. First assessment period will focus on GSP countries in Asia. New interagency process will complement but not replace existing petition receipt and public input process.

**HAPPY BIRTHDAY:** Oct. 27 marked 70<sup>th</sup> anniversary of 23 countries signing General Agreement on Tariffs and Trade (GATT). "There is no parallel to this achievement in any previous trade negotiations, all of which have been on a more limited scale. The completion of such a large

number of simultaneous negotiations of such broad scope in a little over six months is in itself a remarkable feat,” original press release said.

**EX-IM:** Rep. Steny Hoyer (D-Md.) wants to testify against former Rep. Scott Garrett’s (R-N.J.) nomination to be Export-Import (Ex-Im) Bank board president and chairman at nominee’s hearing before Senate Banking Committee Nov. 1 (see **WTTL**, Oct. 23, page 6). “Scott Garrett is precisely the wrong pick to lead the Ex-Im Bank. During his time in the House, he led efforts to block its reauthorization and played a key role in causing a lapse in its charter. Nothing he has said or done since then suggests he would do anything at the Bank other than seek to carry out the same sabotage from the inside,” Hoyer wrote in letter to Committee Chairman Mike Crapo (R-Idaho) Oct. 25. Heritage Action for America, sister organization to conservative Heritage Foundation, wrote letter in support of Garrett Oct. 27.

**PLYWOOD:** In parallel with Oct. 26 ITC hearing on antidumping and countervailing duty petitions against hardwood plywood products from China, lawmakers from both houses urged ITC to defend U.S. workers in timber industry. “Allowing China’s unfair trade practices with respect to hardwood plywood to continue unfettered will not only undermine American manufacturing, but will also encourage more countries to play by their own rules — and not with the fair competition and innovation that allowed us to become the world’s biggest and most vibrant economy,” Sen. Ron Wyden (D-Ore.) said in statement. Coalition for Fair Trade of Hardwood Plywood in March added “critical circumstances” to petition it filed in November (see **WTTL**, March 27, page 6). “We greatly appreciate this Congressional support as we make our case this week before the ITC,” said Coalition legal counsel Timothy Brightbill. “We look forward to more congressional cooperation and support as we continue to fight against dumped and subsidized Chinese products,” he added.

**WTO:** At Dispute Settlement Body (DSB) meeting Oct. 23, WTO members expressed concern that impasse on selecting new Appellate Body members will negatively impact WTO’s dispute settlement system and organization’s credibility, as well as overshadow other issues at WTO Ministerial Conference in Buenos Aires. U.S. has refused to move forward on selection process, despite vacancies... Korea said it was disappointed DSB failed to add to agenda U.S. implementation in large residential washers dispute. U.S. has until Dec. 26 to implement ruling, but Korea has concerns about U.S. transparency in its implementing measures (see **WTTL**, June 5, page 1). Next regular meeting of DSB scheduled for Nov. 22.

**INDIA:** During meeting Oct. 27, Commerce Secretary Wilbur Ross and Indian Commerce and Industry Minister Suresh Prabhu acknowledged “significant areas of progress” in commercial relationship, while sharing “candid feedback” on market access issues, two said in joint statement. “Ross highlighted the potential to enhance trade by lowering tariff and non-tariff barriers and committing to the use of international standards. While recognizing the reforms that India has undertaken to simplify tax and bankruptcy procedures for industry, he indicated that greater effort in this direction would ensure a more meaningful and balanced trade relationship,” they said. Several industry groups, including medical device association, recently targeted India’s benefits under GSP program (see **WTTL**, Oct. 23, page 5).